

LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP

WILMINGTON, DE  
LOS ANGELES, CA  
SAN FRANCISCO, CA  
NEW YORK, NY  
HOUSTON, TX

919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705  
TELEPHONE: 302.652.4100  
FACSIMILE: 302.652.4400

LOS ANGELES  
10100 SANTA MONICA BLVD.  
13th FLOOR  
LOS ANGELES  
CALIFORNIA 90067-4003  
TELEPHONE: 310.277.6910  
FACSIMILE: 310.201.0760

SAN FRANCISCO  
ONE SAN SOME STREET  
34th FLOOR, SUITE 3430  
SAN FRANCISCO  
CALIFORNIA 94104  
TELEPHONE: 415.263.7000  
FACSIMILE: 415.263.7010

NEW YORK  
780 THIRD AVENUE  
34th FLOOR  
NEW YORK  
NEW YORK 10017-2024  
TELEPHONE: 212.561.7700  
FACSIMILE: 212.561.7777

TEXAS  
440 LOUISIANA STREET  
SUITE 900  
HOUSTON  
TEXAS 77002-1062  
TELEPHONE: 713.691.9385  
FACSIMILE: 713.691.9407

Colin Robinson

June 16, 2023

crobinson@pszjlaw.com

**VIA ECF**

The Honorable Craig T. Goldblatt  
United States Bankruptcy Court  
District of Delaware  
824 North Market Street, 3rd Floor  
Wilmington, DE 19801

**RE: *George L. Miller, Chapter 7 Trustee v. Todd S. Nelson, et al.; D. Del. Bankr. Adv. No. 20-50627 (CTG)***

Dear Judge Goldblatt:

I write jointly on behalf of George L. Miller, Chapter 7 Trustee (the “Trustee”) and Defendants to provide an update on the status of discovery in the above-referenced adversary proceeding (the “Adversary Proceeding”) and to propose a process for arriving at an appropriate case management and scheduling order.

As Your Honor will recall, the Trustee is asserting claims against numerous former officers and directors of Education Management Corporation and related entities (collectively, “EDMC”) for breach of fiduciary duty, civil conspiracy, and avoidance and recovery of certain alleged pre-bankruptcy payments. The claims for breach of fiduciary duty relate to a November 2015 settlement between EDMC and the United States government (and various state governments) resolving *qui tam* litigation challenging, among other things, EDMC’s compensation of admissions and recruiting personnel (the “*Qui Tam* Litigation”).

Early on, the parties recognized that – for the reasons explained below – discovery in this action will be very lengthy, challenging and burdensome in light of the enormous volume of



June 16, 2023  
Page 2

potentially discoverable documents and electronically-stored information (“ESI”). The parties thus met and conferred and agreed to begin the process of (i) identifying and locating all of the potential sources of relevant documents and ESI; (ii) assessing the volume of these materials; and (iii) formulating a plan for acquiring, accessing and/or processing these materials for use in the Adversary Proceeding. The parties recognized that it would likely take months to complete this initial exploratory work. The parties also agreed that once this phase was completed the parties would meet and confer in an effort to devise a case management and scheduling order to be proposed to the Court. There are several reasons why the parties believe this is the best way to proceed.

First, the *Qui Tam* Litigation upon which the Trustee’s complaint is largely based involved several years of discovery. The Trustee asserts that, all told, EDMC is estimated to have produced more than 33 million documents to the government. The Trustee has been diligently collecting these materials. The Trustee also asserts that, to date, the Trustee has produced nearly 500,000 pages of electronic documents and sixty-one boxes of hard copy documents. The Trustee further asserts that it has obtained more than sixty hard drives that are believed to include some or all of the 33 million documents produced by EDMC in the *Qui Tam* Litigation. The parties are grappling with how to process and utilize the material on these hard drives, a process made more challenging by the fact that some of the hard drives are encrypted and others are corrupted. Once these issues are resolved, the parties will have to retain vendors to process and load the relevant ESI onto a review platform. Needless to say, the sheer volume of material and the issues presented are extraordinary, and will have a significant impact on the case management and scheduling order.

Second, in 2017, EDMC sold numerous schools and other assets to the Dream Center Foundation (“DCF”). The parties believe that DCF acquired virtually all of EDMC’s then-existing documents and computer servers. Ultimately, DCF was put into receivership and the documents and servers became subject to the control of a court-appointed receiver (the “Receiver”). Based on information recovered by the Trustee, the parties understand that the Receiver acquired possession of a significant portion of EDMC’s records, including potentially a petabyte (1,000 terabytes) of electronic data. While the receivership has been terminated, the



LAW OFFICES

June 16, 2023  
Page 3

parties believe that the former Receiver remains in possession of a very substantial volume of discoverable documents and ESI. Indeed, the index provided by the Receiver is itself 4,500 pages. The parties intend to issue a joint subpoena to the Receiver because informal attempts at obtaining discovery have been unsuccessful. The parties are therefore uncertain of the volume of documents and ESI that they will recover from the Receiver and are uncertain of how that subpoena will impact case management deadlines.

Third, pursuant to consent judgments entered in connection with the November 2015 settlement, a settlement administrator (the “Settlement Administrator”) was appointed. The Settlement Administrator was authorized to conduct annual post-settlement reviews of EDMC’s compliance efforts. The parties believe that the Settlement Administrator may possess discoverable information. To date, the Settlement Administrator has been cooperative; however, the parties are currently uncertain as to the volume of information in his possession and the potential effect on case management.

In conclusion, while the parties are actively pursuing and exploring discovery in a cooperative manner, they remain, at this point, unable to propose an appropriate case management schedule. Accordingly, in light of the above, the parties respectfully submit that the issuance of a scheduling order is not appropriate at this time. Instead, the parties intend to continue to complete their preliminary review of the discovery situation, and then report back to the Court within ninety (90) days regarding their progress.

Of course, the parties remain available to the Court at its convenience to discuss these matters or to provide any further information to the Court.

Respectfully submitted,

*/s/ Colin R. Robinson*

---

Bradford J. Sandler (DE Bar No. 4142)  
Colin R. Robinson (DE Bar No. 5524)  
PACHULSKI STANG ZIEHL & JONES  
LLP



LAW OFFICES

June 16, 2023  
Page 4

919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, DE 19899 (Courier 19801)  
Telephone: 302-652-4100  
Facsimile: 302-652-4400  
E-mail: bsandler@pszjlaw.com  
crobinson@pszjlaw.com

Steven M. Coren (*pro hac vice*)  
Benjamin M. Mather (*pro hac vice*)  
COREN & RESS, P.C.  
Two Commerce Square, Suite 3900  
2001 Market Street  
Philadelphia, PA 19103  
(215) 735-8700

*Counsel for George L. Miller, Chapter 7  
Trustee*

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

Sean M. Beach (DE Bar No. 4070)  
Kevin A. Guerke (DE Bar No. 4096)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Telephone: 302-571-6600  
Facsimile: 302-571-1253  
E-mail: sbeach@ycst.com  
kguerke@ycst.com

NELSON MULLINS RILEY &  
SCARBOROUGH LLP  
Thomas S. Jones (*pro hac vice*)  
6 PPG Place, Suite 700  
Pittsburgh, PA 15222  
Telephone: (412) 730-3071  
Email: thomas.jones@nelsonmullins.com

*Attorneys for Defendants John Devitt Kramer  
and Mark Novad*



LAW OFFICES

June 16, 2023  
Page 5

RICHARDS, LAYTON & FINGER, P.A.

Marcos A. Ramos (DE Bar No. 4450)  
Zachary J. Javorsky (DE Bar No. 7069 )  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
[ramos@rlf.com](mailto:ramos@rlf.com)  
[javorsky@rlf.com](mailto:javorsky@rlf.com)

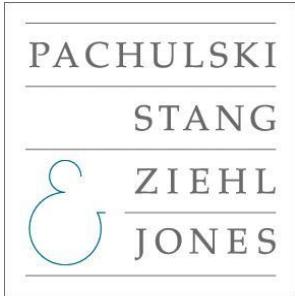
MORGAN LEWIS & BOCKIUS LLP

Michael L. Kichline (*pro hac vice*)  
Robert H. O'Leary (*pro hac vice*)  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: (215) 963-5000  
Facsimile: (215) 963-5001  
[michael.kichline@morganlewis.com](mailto:michael.kichline@morganlewis.com)  
[bob.oleary@morganlewis.com](mailto:b.oleary@morganlewis.com)

*Counsel for Defendants Edward West and  
Mick  
Beekhuizen*

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

Sean M. Beach (DE Bar No. 4070)  
Kevin A. Guerke (DE Bar No. 4096)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Telephone: 302-571-6600  
Facsimile: 302-571-1253  
E-mail: [sbeach@ycst.com](mailto:sbeach@ycst.com)  
[kguerke@ycst.com](mailto:kguerke@ycst.com)



June 16, 2023  
Page 6

SIDLEY AUSTIN LLP  
Chad S. Hummel (*pro hac vice*)  
1999 Avenue of the Stars, 17th Floor  
Los Angeles, CA 90067  
Telephone: 310-595-9500  
Facsimile: 310-595-9501  
E-mail: chummel@sidley.com

Sam Newman (*pro hac vice*)  
Stacy Horth-Neubert (*pro hac vice*)  
Genevieve Weiner (*pro hac vice*)  
Anna Gumpert (*pro hac vice*)  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: 213-896-6000  
Facsimile: 213-896-6600  
E-mail: sam.newman@sidley.com  
shorthneubert@sidley.com  
gweiner@sidley.com  
agumpert@sidley.com

*Counsel for Defendants Mark A. McEachen  
and John Danielson*

BLANK ROME LLP

Jose F. Bibiloni (DE Bar No. 6261)  
John E. Lucian (*pro hac vice*)  
1201 N. Market Street  
Suite 800  
Wilmington, DE 19801  
Telephone: (302) 425-6400  
Facsimile: (302) 425-6464  
E-mail: jose.bibiloni@blankrome.com  
john.lucian@blankrome.com

*Counsel for Defendant Frank Jalufka*